

FCC MAIL SECTION

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 92M-721
03275

DISPATCHED BY

In the Matter of)
WAYNE C. MURPHY)
Licensee of Station WDAT(AM))
Amory, Mississippi)
Order to Show Cause Why the License)
for Station WDAT(AM), Amory,)
Mississippi, Should Not Be Revoked)

MM DOCKET NO. 92-41 ✓

MEMORANDUM OPINION AND ORDER

Issued: June 26, 1992;

Released: June 30, 1992

1. Still another procedural problem has arisen that needs to be publicly reported.

Background

2. On March 26, 1992, the Commission ordered Wayne C. Murphy ("Murphy") to show cause why the license for WDAT(AM), Amory, Mississippi should not be revoked. See FCC 92-92 released March 26, 1992. They did so after investigating why WDAT(AM) has been off the air without authority since June 15, 1989.

3. As is customary in revocation proceedings, the Commission placed both the burden of proceeding and the burden of proof on the designated issues on the Mass Media Bureau. The Commission also instructed Murphy to file his 47 CFR 1.91(c) notice of appearance on or before April 27, 1992. On April 27th attorneys Catherine M. Withers and M. Scott Johnson of Gardner, Carton and Douglas filed such a notice on Murphy's behalf. They represented that Murphy would appear and give evidence on the issues the Commission wanted heard.

4. The Trial Judge released the Prehearing Order on April 1, 1992 (FCC 92M-414). There, among other things, he ordered any discovery in the case to be initiated on or before May 8, 1992. The Mass Media Bureau initiated discovery on May 7, 1992. They served a Request for Admissions on Murphy.

5. Murphy responded to the Bureau's request on May 28, 1992. While he has never officially requested permission to proceed pursuant to a distress sale, in his response, Murphy stated in part as follows:

" . . . Murphy is not financially able to return station WDAT to operation at this time. Murphy has entered into an agreement in principle with a minority person in Amory, Ms. who he believes, upon FCC approval . . . will be able to return the station to operation within 90 days or less." (underlining supplied).

6. Then on June 3, 1992, Withers and Johnson withdrew as Murphy's counsel. See FCC 92M-648, released June 8, 1992. They indicated that any further communications and correspondence¹ should be directed to:

Wayne C. Murphy
1220 E. Northside Drive, #230
Jackson, MS 39211

This caused the Trial Judge to alert Murphy to his obligations to appear at the Prehearing Conference scheduled for June 24, 1992, the Evidentiary Admission Session scheduled for July 2, 1992, and the Hearing scheduled for July 27, 1992.

7. We convened the scheduled prehearing conference on June 24, 1992. Wayne Murphy failed to appear. Instead, and part way through the conference, the Trial Judge was handed a Western Union telegram purportedly signed by "Wayne C. Murphy, licensee."

8. The telegram which was sent from Reno, Nevada at 2:54 a.m.(PDT), reads in part as follows:

"In Matter Re: WDAT MM92-41 Prehearing Conference scheduled today: Respectfully request continuation. Inches from finalizing sale to local minority businessman. Expect transfer under minority distress sale policy. Please . . . "

Ruling

9. Wayne C. Murphy is now in a state of default. WDAT(AM) has been off the air without authority since June 15, 1989. The Commission has ordered an inquiry into that unauthorized silence. Wayne Murphy is the key witness regarding his three-year unauthorized silence. His unexcused and unexplained absence from the prehearing conference has thwarted the inquiry the Commission wants conducted. That will not be tolerated.

¹ The Commission has had a great deal of difficulty communicating with Murphy about WDAT(AM)'s unauthorized silence. See FCC 92-92 supra at para 2.

10. We went ahead with the June 24, 1992, prehearing conference in Murphy's absence. The Mass Media Bureau exchanged their exhibits, and the requisite witness list². The Trial Judge instructed the Bureau to mail a copy of their exhibits to Mr. Murphy at the address provided by his former counsel (see para. 6 supra.)

11. We intend to proceed with the scheduled July 2, 1992 evidentiary admission session, with or without Murphy. If Murphy absents himself from the July 2, 1992 evidentiary admission session, the Trial Judge intends to receive the Mass Media Bureau's exhibits into evidence, and then instruct the Bureau to move for a summary decision on the designated issues. Murphy will not be permitted to interrupt the smooth progression of the case.

12. With that, some observations on Murphy's insouciant and belated June 24, 1992 telegram are in order. First, the telegram doesn't qualify as a pleading under the Commission's rules. It was not properly served under 47 CFR 1.47; the proper number of copies weren't filed pursuant to 47 CFR 1.51(a)(1); and it was not subscribed and verified pursuant to 47 CFR 1.52.

13. Secondly, and assuming the belated telegram qualified as a pleading, the Trial Judge would have dismissed it. He doesn't entertain captive extension of time requests; he doesn't encourage requests for indefinite continuances; and he doesn't grant unexplained requests for continuances.

14. Finally, Murphy's reference to a possible minority distress sale is so much bilge. He has had over three years (since June 15, 1989) to enter into a minority distress sale, and he has done nothing. Since designation he has never requested permission to proceed pursuant to the distress sale procedures. And most importantly, even if he had filed for permission to take the distress sale route, the Trial Judge is not sure that this set of facts lends itself to a minority sale.

15. When it was operating, WDAT(AM) operated at 500 watts, daytime only in Amory, Mississippi (population-7,307). Anyone operating there would have to compete with a broadcaster named Bob McRaney Enterprises, Inc. (BME). BME operates two stations in Amory: Station WAMY(AM) that operates on 1580 KHz at 5Kw-daytime only; and full-time WAFM(FM) operating on 95.3 Mhz at 3Kw power. In addition, another broadcaster operates WWZQ(FM) on 105.3 Mhz at 3Kw serving both Amory and nearby Aberdeen, Mississippi.

16. In addition, a cable company, Hermitage Cablevision, serves Amory. So without taking into account print media, the Trial Judge would be reluctant

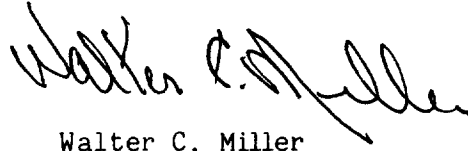
2 The Bureau is calling Wayne Murphy as an adverse witness. That is the only witness the Bureau plans to call on direct.

to foist a 500-Watt daytime only station in Amory, Mississippi on some unsuspecting local minority. The Trial Judge has no desire to lead such a minority down the road to bankruptcy.³

17. Based on the foregoing, Wayne Murphy is now fully apprised of how we will be proceeding from here. He is also now aware, having now been declared in default, how close he is to having WDAT(AM)'s license summarily revoked.

18. SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Walter C. Miller", written in a cursive style.

Walter C. Miller
Administrative Law Judge

³ The Trial Judge has heard cases in this section of Mississippi before. This is not the most affluent section of the country, and it is not unusual for AM daytime stations to go dark for economic reasons.